The Solicitors' Journal

Vol. 94 July 8, 1950 No. 27

CURRENT TOPICS

The Leasehold Report

THE long-awaited final report of the Committee on Leasehold Tenure has at last been published (Cmd. 7982, H.M.S.O., 4s.). As in the interim report of March last year, the Committee has been unable to reach unanimity, a majority report being signed by eight members, a supplementary report by five members including three of the signatories to the majority report, a minority report by two members, and a note by Lord Justice JENKINS dissenting from last year's majority interim report. One member also submitted a separate report dissenting from certain majority findings. As an indication both of the inherent difficulty of the subject-matter and of the political cross-currents which seem likely to bedevil any attempted reform of the law of leasehold, the report will have served to underline the obvious, but it is to be hoped that urgent and immediate practical remedies within a limited compass, and in particular increased security of tenure for business tenants on the lines indicated in the majority report, will not be shelved as a result of the controversy surrounding longer-term questions such as enfranchisement. It is impossible even to attempt here to summarise the recommendations enshrined in the report —which it is hoped to discuss in a later issue—but it is pleasant to record that the Committee achieved unanimity on questions relating to repairs, improvements and covenants, and recommended consolidation of landlord and tenant law into a single statute.

Rent Control Policy

THE problem of rent control, which has been with us ever since the first Act was passed in 1915, is as urgent now as it ever has been. It is devoutly to be hoped that our legislators will give the same prominence in their policy-making as *The Times* gave in its issue of 1st July to the thoughtful and constructive proposals in the letter written by Mr. FRANCIS N. BEAUFORT-PALMER. He wrote: "Rent control should be part of a considered policy of building and conversion and serious repairs," and suggested that contractors should be allowed to construct blocks of flats for local authorities to rent and let at subsidised rents so as to enable local authorities to concentrate on conversions and building of small units. A system such as this, he wrote, would allow methodical re-housing. With regard to the present conflict of interest between landlords dissatisfied with their "meagre returns" and tenants dissatisfied with their high rents he wrote that rent tribunals had not been unsatisfactory but that (presumably in the case of houses let by the local authority) an opportunity ought to be given to tenants to protest at an increase of rent. He suggested limits of increases but that rent tribunals should be empowered to raise the rent to above the new figure or to reduce it below the old figure. He was against appeals, as possibly causing the tribunals' informality to be lost and prolonging difficult situations. A good compromise to the question of appeals, he wrote, might be the extension to cases under the 1949 Act of the power of tribunals under the 1946 Act to reconsider cases in certain circumstances. Mr. Beaufort-Palmer writes with the authority of experience of this

CONTENTS

difficult subject, and he writes opportunely, for at the present time important reforms might well be carried through with the support of men of goodwill in all parties.

Rights of Surviving Spouse on Intestacy: Committee to be Appointed

AN investigation into the adequacy, in the changed money values of to-day, of the provisions of s. 46 of the Administration of Estates Act, 1925, relating to the rights of a surviving spouse on an intestacy, has for some time been considered by many lawyers to be overdue. We have from time to time expressed in these columns the view that the true test of the adequacy of the "widow's £1,000," as it has come to be called, should be the size of the estate rather than the real value of money (see, e.g., 93 SOL. J. 225), but it cannot be denied that in the case of a large estate the widow may suffer injustice under the present law. The ATTORNEY-GENERAL'S announcement in the Commons on 3rd July that a Committee is to be set up by the Lord Chancellor to examine the question will undoubtedly be welcomed by the profession, for the rigidity of s. 46 in a changing world inevitably produces anomalies, whatever view is taken of its merits. The terms of reference of the Committee, whose composition has not yet been announced, are: (1) To consider the rights under s. 46 of the Act of a surviving spouse in the residuary estate of an intestate; (2) To consider whether, and if so to what extent and in what manner, the provisions of the Inheritance (Family Provision) Act, 1938, ought to be made applicable to intestacies; (3) To report whether any, and if so what, alteration in the law is desirable.

Criminal Justice (Scotland) Act, 1949

HOME Office Circular No. 131/1950, dated 22nd June, 1950, draws attention to provisions of the Criminal Justice (Scotland) Act, 1949, which came into force on the 12th June, 1950, and are of concern to courts in England. A number of sections deal with probationers who move from Scotland to England or from England to Scotland. Among important changes is that in Sched. XI, which substitutes a new section for s. 9 of the Criminal Justice Act, 1948, relating to probation orders made in England in respect of persons who are resident or about to reside in Scotland, and also to probationers who move from England to Scotland while their probation orders are in force. Subsection (1) provides that a court, when making a probation order, on being satisfied that the probationer resides or will reside in Scotland, shall specify as the appropriate court a summary court in Scotland having jurisdiction in the place in which the offender resides or will reside. Where the offender is convicted on indictment in England the appropriate court in Scotland will be a sheriff court. In case of doubt as to the court having jurisdiction for the place in which the offender's residence or proposed residence is situated, the Probation Branch, Home Office, Whitehall, London, S.W.1, will, on being informed of the full address, make the necessary inquiries. Subsection (5) provides, as an alternative to the imposition of a fine by the Scottish court, the machinery whereby a probationer who fails to comply with the requirements of the order may be committed to custody or released on bail by the appropriate Scottish court until he can be brought or appear before the English court which made the order. Where the Scottish court adopts this course the clerk of the court will send to the English court a signed certificate detailing the probationer's failure, and this certificate will be admissible as evidence. Subsection (6) provides that in relation to a probation order made under this section, the appropriate court in Scotland shall have jurisdiction under s. 8 (1) of the Criminal Justice Act, 1948, i.e., if it appears that the probationer has been convicted and dealt with in respect of a fresh offence during the probation period, the appropriate court may issue a summons requiring his appearance before the English court, or may issue a warrant for his arrest. In addition, the English court which made the order has, under s. 8 of the Act of 1948, itself power to issue process to bring the offender before it to be dealt with for the original offence, and such process is, under s. 11 (5) of the Act of 1948, enforceable in Scotland.

Proof of Previous Convictions by Scottish Courts

SCHEDULE XI of the Scottish Act amends s. 23 of the Criminal Justice Act, 1948, which relates to the proof of previous convictions for the purposes of ss. 21 and 22. Subsection (2) of s. 80 of the Criminal Justice Act, 1948, provides that references to previous convictions shall be construed as references to previous convictions by a court in any part of Great Britain. Where one or more of the previous convictions which make an offender liable to preventive detention or corrective training are convictions in Scotland it has been necessary to adduce the expert evidence of a Scottish practitioner to prove that the offences concerned are offences which in Scotland are punishable on indictment with a term of two years' imprisonment or more. The amendment obviates the necessity for having expert evidence on this point by providing that a certificate purporting to be signed by or on behalf of the Lord Advocate that an offence is punishable on indictment in Scotland with imprisonment for a term of two years or more shall be evidence of the matter so certified. This amendment does not affect the mode of proving that the offender was convicted of such an offence.

The Council of Law Reporting

THE interest of solicitors in the work of the Incorporated Council of Law Reporting for England and Wales has for many years been apparent from the fact of their representation on the Council of that body. Together with the Attorney-General and the Solicitor-General, the President of The Law Society, Sir NEVIL SMART, is an *ex-officio* member of the Council, and among the nominated members are two nominees of The Law Society for the year 1949–50, Sir LESLIE FARRER and Mr. G. D. COLCLOUGH. The fact that Sir STANLEY POTT, who recently resigned from the Council after twenty-two years' service, was not merely an *ex-officio* member when he became President of The Law Society in 1942, but became Vice-Chairman in that year and Chairman in 1948, underlined the importance of law reporting to solicitors. "Sir Stanley Pott," says the report which was adopted by the Association of the Council at its annual meeting on 22nd June, "has the distinction of being the first solicitor to have filled the office of chairman since the Council's foundation eighty-five years ago, and the Council desire to record their gratitude and appreciation of the valued services rendered by him on the Executive Committee and the Council in the management of the Law Reports and the business of the Council, and they wish him many years of health and happiness in his retirement." Trading receipts for the year are higher by £8,724 than in the previous year, and the loss on trading is £3,080 as against £9,865 in the previous year. The Council hope to have a balance on the right side by the end of 1951, owing mainly to a fall in printing costs and a hoped-for reduction in legislation. The net deficit for the year is £460. The Association is to be congratulated on the manifest improvement in its affairs, the soundness of which is gradually depending less on its reserves of nearly £77,000 and more on its trading.

Costs

THE CROWN AND PUBLIC AUTHORITIES

FORMERLY actions could not lie against the Crown, but in those cases where the Crown was a party to the proceedings, for example, by voluntary agreement, then it neither paid nor received costs. The position was altered by the Administration of Justice (Miscellaneous Provisions) Act, 1933, which enabled a court or judge, and also an arbitrator, to award costs against the Crown in any cases where the Crown was a party to the proceedings. The Crown Proceedings Act, 1947, rendered the Crown liable as a party in most proceedings which could be brought against an individual, and by s. 15 of the latter Act any proceedings in which the county court has jurisdiction may be brought by or against the Crown in a county court, and it follows, therefore, that costs on the county court scale may be awarded to or against the Crown.

Section 7 (1) of the Administration of Justice Act, 1933, provides that " in any civil proceedings to which the Crown is a party in any court having power to award costs in cases between subjects, and in any arbitration to which the Crown is a party, the costs of and incidental to the proceedings shall be in the discretion of the court or arbitrator to be exercised in the same manner and on the same principles as in cases between subjects and the court or arbitrator shall have power to make an order for payment accordingly."

This leaves no room for doubt that the Crown will be liable for the costs of proceedings brought by or against it, and to bring the matter completely in line with the position between ordinary individuals s. 24 (2) of the Crown Proceedings Act, 1947, provides that where any costs are awarded to or against the Crown interest shall be payable on those costs, unless the court otherwise orders, at the same rate as that at which interest is payable upon judgment debts due to or from the Crown. Interest is not, of course, payable in respect of the costs of an arbitration since the award of the arbitrator is not a final judgment in accordance with the Judgments Act, 1838.

Where the costs of proceedings are awarded against the Crown then they will be agreed with or taxed by the solicitor to the department concerned in accordance with the list published by the Treasury in December, 1947 (see 91 SOL. J. 666). It will be found that in a large number of cases the appropriate person to deal with the question of costs is the Treasury Solicitor.

It is quite clear from the provisions cited above that in any proceedings brought by or against the Crown, it is in no better and no worse a position than an ordinary individual, and if costs are awarded to the Crown then, unless otherwise directed, they will be taxed as between party and party with the result that certain items of costs incurred by the Crown may very well be disallowed on taxation on the ground that they have arisen through over-caution or extravagance and were not necessary for the attainment of justice.

The position is quite different (at present: but see p. 439, *post*) as regards public authorities. The relevant provision is s. 1 of the Public Authorities Protection Act, 1893, and although part of this section has been repealed and is replaced by s. 21 of the Limitation Act, 1939, that portion of it which remains provides that where any action or proceeding is commenced against any person for any act done in pursuance of any public duty or authority, then if judgment is obtained by the defendant it shall carry costs to be taxed as between solicitor and client. Similarly, where an action is brought for damages and a tender is made during the course of the proceedings and the sum awarded is not more than the amount of the tender then the defendant will be entitled to costs on a solicitor and client basis in so far as those costs are incurred after the date of the tender.

The first point which strikes one about this provision is that the public authority is only protected where it is the defendant in the action, so that where the public authority is the plaintiff and is successful then it will, normally, only be entitled to costs on a party and party basis. It is hardly necessary to add that in any action to which the section applies, where the plaintiff is successful, he will be awarded costs only on a party and party basis also, for the section is clearly designed to afford protection to the public authority and to no other party.

Particular attention may well be drawn to the precise nature of the actions where protection is afforded to the public authority. The section states that it applies to any action brought in respect of any alleged neglect or default in the execution of any public duty or authority, and it would seem to follow that it cannot, for instance, apply to Admiralty actions *in rem* (see *The Burns* [1907] P. 137). Not all actions brought in the Admiralty Division are, however, actions *in rem*, so that if the action, although brought in that division of the High Court, is really an action at common law for damages, then the section will apply.

It will be observed that the court is left with no discretion in the matter, and if it awards costs to the defendant in an action to which the section applies then those costs will be taxed on a solicitor and client basis, and the defendant cannot be deprived of that right by an award of costs to be taxed on a party and party basis. There is nothing, however, to prevent the judge from exercising his discretion under R.S.C., Ord. 65, r. 1, and depriving the defendant of his costs altogether, where he considers it proper so to do.

If the plaintiff in an action covered by the section is successful and is awarded costs against the public authority or an officer thereof, but is ordered to pay to the authority its costs so far as they are increased by an issue in respect of which the plaintiff failed, then the plaintiff's costs will be taxed on a party and party basis, but the defendant's costs will be taxed on a solicitor and client basis (see *Leckhampton Quarries* v. *Ballinger* (1905), 93 L.T. 93).

It will be observed that the section refers to the costs of an action, and this has been interpreted as applying to actions only and not appeals (see *Fielden* v. *Corporation of Morley* [1900] A.C. 133) with the result, so it would seem, that where the plaintiff in an action to which the section refers is successful in the action but loses on appeal, then the defendant's costs of the action will be taxed on a solicitor and client basis, whilst the costs of the appeal will be taxed on a party and party basis. There seems to be something a little illogical about this.

The remaining question that arises about the provisions of this section is in connection with the meaning to be attached to the term " solicitor and client " costs. It will be recalled that a practice has arisen of differentiating between the various classes of costs according to the source from which payment is to be obtained. Thus, there are (*a*) party and party costs, payable by one party to another in respect of an action or proceeding, (*b*) solicitor and client costs payable by one party to another and (*c*) solicitor and client costs payable by the solicitor's own client. The latter are known as " solicitor and own client costs " and where they are to be met by a third party they afford the solicitor's client a complete indemnity for the amount of his costs, so that if

in an action it is desired to achieve this effect then it is imperative to stipulate that the successful party shall receive from the unsuccessful party his costs to be taxed on a "solicitor and own client" basis.

Now what is the intention of s. 1 of the Public Authorities Protection Act, 1893? In the case of *Giles* v. *Randall* (1914), 59 SOL. J. 131, the meaning of the term "solicitor and client" costs came up for review and Buckley, L.J., during the course of his judgment, observed: "a practice has grown up, which I must say I regret, of differentiating between a taxation of costs as between solicitor and client and as between solicitor and own client. In the former case the taxation is substantially a party and party taxation on a more generous scale."

One of the learned counsel in that case contended, but unsuccessfully, that solicitor and client costs should afford the party to whom they are awarded a complete indemnity in respect of his costs "as under s. 1 of the Public Authorities Protection Act, 1893." If it is the intention of the Act that the public authority should be afforded a complete indemnity, and that the wording of the section gives it that, then it means that the term "solicitor and client" costs has a different meaning for the purpose of the Act from the one it has in other circumstances. It is true that the Act was passed long before the case of *Giles* v. *Randall* was decided and it might well be argued that at the time when the Act was passed the practice of differentiating between the various classes of costs had not yet been established, with the result that at that time the term did, in fact, afford a complete protection. Be that as it may, the fact remains that at the present time a custom has come to be established of differentiating between solicitor and client costs and solicitor and own client costs. Moreover, it cannot have been the intention of the draftsman of the Act to saddle the unsuccessful plaintiff with costs arising from over-caution or extravagance on the part of the defendant. Indeed, the latter part of R.S.C., Ord. 65, r. 27 (29), expressly prohibits a taxing master from allowing such items, save as against the party incurring the same, although an unsuccessful party might agree to bear such items as a term of settlement.

From this, one may therefore conclude that the term "solicitor and client" costs as used in s. 1 of the Public Authorities Protection Act, 1893, has the same meaning as is attached to it when used in a judgment or order of the court and is subject to the same limitations. J. L. R. R.

A Conveyancer's Diary

HOUSING LAW: SOME RECENT CHANGES

THERE are certain modifications of the existing law relating to various housing matters contained in the Housing Act, 1949, which the conveyancer and property lawyer cannot afford to ignore. The most important of these changes concern the power of county courts to vary the terms of leases or restrictive covenants, and the extension of the system of control of rents and selling prices of houses built under licence under the Building Materials and Housing Act, 1945.

As to the first of these matters (which was briefly referred to at p. 399, *ante*) s. 163 of the Housing Act, 1936, provided that where it is proved to the satisfaction of a county court, on an application either by a local authority or by any person interested in a house, that owing to changes in the character of the neighbourhood in which the house is situate the house cannot readily be let as a single tenement, but could readily be let for occupation if converted into two or more tenements, and that by reason of the provisions of the lease of, or any restrictive covenant affecting, the house or otherwise such conversion is prohibited or restricted, the court may vary the terms of the lease or other instrument imposing the prohibition or restriction so as to enable the house to be so converted, upon such terms as the court may think just. There were thus two matters upon which an applicant had to satisfy the court under the original section; he had to show that (*a*) the house could not readily be let as a single tenement, and (*b*) that this difficulty in letting was due to changes in the character of the neighbourhood. Section 11 of the 1949 Act has extended the power of the court in this respect so that it is now exercisable in any case where planning permission has been granted under the Town and Country Planning Act, 1947, for the use as two or more dwelling-houses of a building previously used as a single dwelling-house, in like manner as it is exercisable under the original s. 163 on proof that, owing to changes in the character of the neighbourhood, the house cannot be readily let as a single tenement, etc. In the case where the requisite planning permission has been obtained, therefore, it will no longer be necessary to prove either a change in the character of the neighbourhood or the difficulty, consequent thereon, of letting the house as a single tenement. The first of these matters was in many cases easy enough to prove, but the second was not, and it was probably this which made successful applications under s. 163 somewhat rare, except in the case of houses in neighbourhoods which had suffered a spectacular decline in attractions as residential areas.

Under the section as now extended, provided the requisite planning permission is obtained (a matter which should not present any difficulty in the present housing shortage), an application to the county court under this jurisdiction will be largely formal, the applicant merely producing the instrument imposing the prohibition or restriction and putting in evidence the grant of the planning permission; but, of course, the result of such an application will be anything but a formality if it is opposed, since the court retains a complete discretion whether to accord or withhold its approbation and, if the application is approved, whether terms should be imposed on the successful applicant.

This jurisdiction under the Housing Acts has not been widely invoked, perhaps because of the lingering impression (which was erroneous, as Denning, J., as he then was, pointed out in *Green* v. *Minister of Health* [1947] 2 All E.R. 469) that the Housing Acts applied only to houses for the working classes. The deletion from all relevant enactments of references to the working classes by s. 1 of the 1949 Act should remove all doubt on this score. It is now perfectly clear that there is no limit to the jurisdiction of the county court under s. 163 of the 1936 Act, as now extended, and in a suitable case a house in Grosvenor Square, if there are any left which have not already been rebuilt as flats or occupied as embassies or offshoots of government offices, may be made the subject of an application to a county court under s. 163, just as may be a tenement in St. Giles (or whatever its latter-day equivalent in the social scale of values may be). This jurisdiction is supplemental to that under s. 84 of the Law of Property Act, 1925, and in a case which may be brought within it it may be preferable to resort to it rather than to the jurisdiction under s. 84, now exercisable by that dark horse, the Lands Tribunal.

To turn now to the other provision of the present Act of peculiar interest to the conveyancer, s. 7 (1) of the Building Materials and Housing Act, 1945, provided that "where a house has been constructed under the authority of a licence granted for the purposes of a Defence Regulation . . . and the licence, whether granted before or after the passing of this Act, has been granted subject to any condition limiting the price for which the house may be sold or the rent at which it may be let, any person who, during the period of four years beginning with the [20th December, 1945] sells or offers to sell the house for a greater price than the price so limited . . . or . . . lets or offers to let the house at a rent in excess of the rent so limited . . . shall be liable . . . to a fine . . . or to imprisonment . . . or to both . . ."

The period of four years from the 20th December, 1945, during which prices and rents were to be originally controlled has been extended to a period of eight years from that date (s. 43 (1) of the 1949 Act). This is something for which most people must have been prepared. A provision which will put an end to a fairly obvious evasion of the original Act is to be found in s. 43 (2) of the 1949 Act, whereby the provisions of s. 7 (1) of the 1945 Act are made to apply not only (as originally provided) to a sale or an offer to sell a house constructed under the authority of the kind of licence there mentioned, but also to a sale or offer of a house in course of construction under the authority of such a licence. There is no reference to letting or to offers to let in s. 43 (2), but in practice houses built under this kind of licence are so rarely built for letting that the omission is of little significance. Section 7 (1) of the 1945 Act is also now extended so as to apply to a sale or letting or an offer to sell or let a building of any kind converted, or in course of conversion, into a house or houses (which will include any part of a building occupied or intended to be occupied as a separate dwelling, and in particular a flat: s. 50 (1)) under the authority of such a licence (s. 43 (3) of the 1949 Act).

These are the provisions which extend the scope of the original control as introduced by the 1945 Act. Section 43 (5) is concerned with another problem. The selling price or rent fixed under s. 7 (1) of the 1945 Act was an immutable figure, and the authority which fixed it had no power whatsoever to review it during the period of control which, as has been seen, is now considerably extended. A very limited power of this kind is now given by s. 43 (5) of the 1949 Act, which provides that in the case of a house controlled under the 1945 Act, if works have been executed after its construction, the appropriate local authority may, upon application to it, direct that for the purposes of this control, the price for which the house may be sold or the rent at which it may be let shall be increased by such amounts as may be specified. This subsection applies to houses provided by conversion of existing buildings as it does to houses constructed. If a directive is made under this provision, it is the duty of the proper officer of the local authority concerned to record particulars of the direction in the local land charges register, where any condition imposed by a building licence has to be registered under s. 8 (1) of the 1945 Act.

Sections 11 and 43 are the only sections of the 1949 Act which require the particular attention of conveyancers, but there are certain other provisions of this Act which may also be noted. Sections 4 and 5 are concerned with the powers of local authorities under s. 91 of the Housing Act, 1936, to make advances for increasing housing accommodation, and among various amendments to the earlier Act, the limit of value of houses in respect of which an advance can be made under these provisions has been raised from £800 to £5,000. This extension of their powers may induce some local authorities to enter the building society business. Finally, ss. 20 *et seq.* provide for grants by local authorities in respect of expenses incurred in improving dwellings, whether by conversion of buildings or otherwise. These provisions are not of sufficient general interest to require more than a mention in passing, but they should also be noted for reference in a suitable case in the future.

"A B C"

Landlord and Tenant Notebook

COMPENSATION FOR LIMING AGRICULTURAL LAND

Two passages of a paper recently read by Sir James Scott Watson to the Central Association of Agricultural Valuers ran: "The principle of tenant right is to compensate a farmer who leaves his land in better than average condition of fertility, and to dilapidate an outgoer who leaves his land in a worse than average state. We cannot find the right answer from the fertiliser and feeding stuffs invoices alone" and "Why should a farmer be compensated for applying one ton of limestone to land which, after such a dressing, still shows a lime requirement of two tons?" The title of the paper was, "Tenant Right Valuation in these Changing Times," and one may suspect that the reader had no high opinion of the new methods prescribed by the Agricultural Holdings Act, 1948, and the Agriculture (Calculation of Value for Compensation) Regulations, 1948, for valuing "new improvements," i.e., those commenced on or since 1st March, 1948.

Questions might be raised and argued, at all events in the case of liming, about the interpretation or even the validity of the regulations; but it should be said at the outset that, by divorcing passages from their contexts, it is possible to form an erroneous view of their true effect.

The position is as follows: The Act of 1948, s. 51 (1), says: "The amount of any compensation under this Act for a new improvement, specified in Pt. I of Sched. IV thereto . . . shall be the value thereof to an incoming tenant calculated in accordance with such method, if any, as may be prescribed." Part I of Sched. IV includes (No. 5) liming of land, and the Minister of Agriculture and Fisheries prescribed by statutory instrument (1948 No. 185) the above-mentioned regulations, making them on 24th February, 1948 (under the Agriculture Act, 1947), and laying them before Parliament the very next day; by their own reg. 5 (2) they came into operation on 1st March, 1948.

Section 51 (1) appears to respect the principle advocated in the first of the two quotations made from the paper; I do not suggest that harmony is complete, for the Act (as did its predecessors) entitles a tenant to compensation whether the result be land in better than average condition of fertility or not, and I do not know whether the reader really meant that a farmer who took land in a state well below average and left it, say, in a state just below average should not be rewarded. But when one comes to the regulations and finds, first (reg. 1), "Subject to the provisions of reg. 3 hereof, the method of calculating the value to an incoming tenant of an improvement specified in Pt. I of Sched. IV to the Act shall be as set out in Pt. I of the Schedule to these regulations" and then (Schedule, Pt. I, 5), "Liming of Land. (1) The

value shall be the reasonable cost of the lime as applied to the land (including the cost of delivery and application), reduced by one-eighth part of the amount thereof for each growing season since application" one may be tempted to ask what right had the Minister to prescribe that value to an incomer should be measured merely by reference to cost to the outgoer?

The answer is, I think, that the value is not to be merely so measured. For one thing, a second sub-paragraph—"... the reasonable cost shall not be regarded as exceeding the estimated cost (including the cost of delivery and application) of forty hundredweight per acre pure calcium oxide (CaO), unless in the circumstances of the case a heavier dressing was economic, and of benefit to the incoming tenant"—discourages over-lavishness but at the same time meets the case of land which, after such a dressing as falls within the prescribed limit, still shows a lime requirement. The tenant may safely go on if that should be the position. This, of course, would not in itself prevent him from claiming the undeserved compensation visualised by the paper if he did not go on; but he might then find himself confronted by the provisions of reg. 3, expressly mentioned in reg. 1 set out above.

Regulation 3 reads: "The value of any such improvement or matter as aforesaid calculated in accordance with the method set out in Pt. I or Pt. II of the Schedule to these regulations shall be reduced by such amount as may be necessary to ensure that the value so calculated does not exceed the value to an incoming tenant, in any case where: (*a*) the said improvement or matter has not been undertaken or carried out in accordance with the rules of good husbandry; or (*b*) the value to an incoming tenant of the said improvement or matter has been reduced by any breach by the tenant of the rules of good husbandry, or any act or omission by the tenant, whether wilful or negligent; or (*c*) any work carried out has not been carried out in the most efficient and economical manner practicable in all the circumstances; or (*d*) reasonable precautions have not been taken by the tenant to ensure that the full benefit of the said improvement or matter is secured to the incoming tenant."

These provisions do mean, of course, that the tenant farmer may not buy lime regardless of its calcium oxide or magnesia content, apply it regardless of the strength or lightness of the soil, incur unnecessarily liability for overtime wages in applying it, etc., and then measure compensation by reference to the cost of 40 cwt. per acre pure calcium oxide. But the interesting question is whether they, or any of them, adequately deal with a case of spoiling the ship for the sake of a ha'porth of tar.

In general, they do appear to deal with matters of quality rather than of quantity. But I think that the references to good husbandry in (*a*) and (*b*), and to omission by the tenant in the latter, may enable a landlord to resist or reduce a claim in the circumstances visualised. In the interpretation section of the Act of 1948 (s. 94), we find (subs. (2)) that s. 11 of the Agriculture Act, 1947, specifying the circumstances in which an occupier of agricultural land is deemed for the purposes of that statute to fulfil his responsibilities to farm it in accordance with the rules of good hubandry, shall apply for the purposes of this Act. In general, the Agriculture Act, 1947, s. 11 (1), provides that the occupier shall be deemed to fulfil those responsibilities in so far as the extent to which and the manner in which the unit is being farmed (as respects both the kind of operations carried out and the way in which they are carried out) is such that, having regard to the character and situation of the unit, the occupier is maintaining a reasonable standard of efficient production, as respects both the kind of produce and the quality *and quantity* thereof, while keeping the unit in a condition to enable such a standard *to be maintained in the future;* and in particular, by subs. (2) (*b*), regard is to be had to the extent to which the manner in which arable land is being cropped is such as to maintain that land clean and in a good state of cultivation *and fertility* and in good condition. This second provision does not read well—"the extent to which the manner in which" is inelegant, but there it is; and what I would submit is that an answer to the objection mooted on the lines of "well, but the tar I did use was of the best quality, and I paid no more than standard rates for delivery and for the actual tarring" would not be a valid one, because s. 51 (1) and Sched. IV, Pt. I, and the Agriculture (Calculation of Value for Compensation) Regulations read as a whole do insist on extent and quantity as well as on quality.

R. B.

HERE AND THERE

FLOGGING AGAIN

WHILE all over the front pages of all the newspapers and in and out among the correspondence columns the journalists and the public were indulging in an orgy of flagellation, we lay low and said nothing. It was all too like the business of flogging a dead horse. Now, however, perhaps we may allow ourselves a few words. Two separate items of news have lately illustrated the species of schizophrenia from which the national mind appears to suffer in contemplating this particular subject. On the one hand the Home Secretary, confronted with a petition from 7,000 constituents of Bexley to start up corporal punishment again for crimes of violence, dug himself in on the defensive line of the report of the departmental committee in 1938 that its deterrent effect was not great enough to outweigh the objections to it. On the other hand, when members of U.N.O.'s Trusteeship Council wanted to abolish flogging in British Togoland (the Supreme Court can award it for arson, train-wrecking and crimes of violence), the answer was: "We feel corporal punishment should be kept at present as a deterrent to serious crime." So there you have it and you can take your choice according to taste. It is true the citizens of Bexley committed a rather surprising tactical error in overstating their case, talking of "a number of brutal and callous assaults on women and children" committed there recently, whereas records showed in the first five months of the year but three offences of violence against women and only one of these formerly "floggable," thereby giving away a free debating point, though strategically it leaves the controversy where it was before.

CROSS-QUESTIONS

As with the old pacifist controversies of the thirties, the discussion has been almost hopelessly bedevilled by personal abuse, so that one side paint their opponents as little better than a gang of sadistic perverts, only to be themselves equally vividly represented as having nothing to them but a mawkish, squeamish sentimentality. Neither the noble restraint of the Quakers, for instance, nor the perfectly straightforward zeal of the normal man against wanton brutality can be boxed into generalisations as narrow as that. The objection of the abolitionists that abnormal people may enjoy flogging is not really any more relevant than the parallel objection that normal people hate it. The world would be a far easier place to live in if what was nice and what was nasty was the final test of what I ought or ought not to do. To take the simplest view, it is not,

I'm afraid, a factor one takes into account on deciding whether to pay one's income tax or go to the dentist. It's nasty but it's got to be done. With flogging the question is quite simply "Does it work?" Does it diminish the amount of crime? Does it deter some? The question is not, you will notice, does it deter *everyone*? Or, is it a universal panacea? What you'd expect would be that what works with some would not work with others—flogging for one, hard labour for another, maybe a month at the seaside for a third. Certainly I've never heard anyone come within miles of establishing the contrary. Comparisons with foreign countries are apt to be so very misleading. Nations vary like individuals. The French, for instance, do not flog; they have not flogged for about a century and a half, but they have a system of transportation quite fierce enough to constitute at any rate a factor in the calculations of anyone likely to go in for deliberate crime.

PRACTICAL PROPOSITIONS

STILL, talk as you may, personal experience is best and anyone who went to a school (as I did) where corporal punishment was part of the discipline, knows perfectly well that it does deter—anyhow it deters *some* boys from *some* misdemeanours—and to that extent it works. Of course, it's not the best way of getting either good work or good behaviour. Good influences, magnetic personalities, enthusiastic teachers, they do the job—when you can get them. But the sad truth is that there aren't enough to go round either in the schoolroom or the great big cruel world. And meanwhile there's the boy lazing at his desk and the thug waiting at the assizes to be dealt with this morning. Force of all kinds, including war, is the wise man's last resort, but it is a resort and it has always seemed to me just about as impractical to disarm the hand of the law as to disband the army. By the way, in an age when people tend to drag economics into every consideration, it may be interesting to recall that it costs £300 a year to keep a man in prison (about as much as to keep a boy at a good school). With an average of 13,500 prisoners in England and Wales on any given day, the bill is over £4,000,000. For better or worse, it's something of a luxury to renounce the shorter, sharper methods.

RICHARD ROE.

BOOKS RECEIVED

Archbold's Criminal Pleading, Evidence and Practice. Thirty-second Edition. Edited by T. R. FITZWALTER BUTLER, Barrister-at-Law, and MARSTON GARSIA, Barrister-at-Law. Supplemental Service, Issue No. 2. 1st May, 1950. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd.

The Inheritance (Family Provision) Act, 1938. By MICHAEL ALBERY, of Lincoln's Inn, Barrister-at-Law. With a Foreword by the Hon. Mr. Justice VAISEY. 1950. pp. vii and (with Index) 70. London: Sweet & Maxwell, Ltd. 10s. 6d. net.

Duties of a Company Secretary. By T. BOLTON, A.C.I.S., A.I.A.C., and PERCY F. HUGHES, F.C.I.S., A.S.A.A. 1950. pp. xv and (with Index) 386. London: Secretaries Journal Ltd. 20s. net.

Principles and Practice of the Criminal Law. By SEYMOUR F. HARRIS, B.C.L., M.A. (Oxon.). Eighteenth Edition by A. M. WILSHERE, M.A., LL.B., of Gray's Inn, Barrister-at-Law. 1950. pp. xlix and (with Index) 692. London: Sweet and Maxwell, Ltd. 30s. net.

The Law of the United Nations. By HANS KELSEN, Professor of Political Science at the University of California (Berkeley). 1950. pp. xvii and (with Index) 903. London: Stevens & Sons, Ltd. 105s. net.

Bullen and Leake's Precedents of Pleadings in Actions in the King's Bench Division of the High Court of Justice. Tenth Edition. By GEORGE KIRKHOUSE JENKINS, K.C., of the Middle Temple, a Judge of County Courts. 1950. pp. clxxxiv and (with Index) 973. London: Stevens & Sons, Ltd.; Sweet & Maxwell, Ltd. 100s. net.

International Income Tax Law Journal. April, 1950. Edited by B. R. JAIN. Delhi, India: Chadni Chowk (Kucha Brijnath).

Exchange and Borrowing Control. Supplement. By F. C. HOWARD, M.A., Solicitor of the Supreme Court. 1950. pp. iv and 28. London: Butterworth & Co. (Publishers), Ltd. 4s. net.

Whitworth on Profits Tax. By PETER E. WHITWORTH, B.A., of the Middle Temple, Barrister-at-Law. 1950. pp. xiii and (with Index) 251. London: Jordan & Sons, Ltd. 20s. net.

Nisi Prius. Journal of the Law Societies in the University of Oxford. Vol. 1, No. 4. Trinity Term. Editor: M. H. FORD, Keble College. Oxford: Keble College Law Society. 1s. net.

Inventions, Patents and Monopoly. By P. MEINHARDT, of the Inner Temple, Barrister-at-Law. With a Foreword by JAMES MOULD, K.C. Second Edition. 1950. pp. xvi and (with Index) 320. London: Stevens & Sons, Ltd. 30s. net.

Stevens' Elements of Mercantile Law. Eleventh Edition. By JOHN MONTGOMERIE, B.A., of Lincoln's Inn, Barrister-at-Law. 1950. pp. lxiii, 663 and (Index) 80. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

The Court of Appeal in England. By the Rt. Hon. Sir RAYMOND EVERSHED, Master of the Rolls. 1950. pp. 32. London: University of London, The Athlone Press. 2s. 6d. net.

The Office and Duties of the Director of Public Prosecutions. By Sir THEOBALD MATHEW, K.B.E., M.C., Director of Public Prosecutions. 1950. pp. 16. London: University of London, The Athlone Press. 1s. 6d. net.

The Howard Journal. Vol. 8, No. 1. 1950. London: The Howard League for Penal Reform. 1s. net.

Jordan's Income Tax Guide, 1950-1951. Twentieth Edition. By CHARLES W. CHIVERS. 1950. pp. 48. London: Jordan and Sons, Ltd. 1s. 6d. net.

The International Law Quarterly. Vol. 3, No. 3. July, 1950. London: Stevens & Sons, Ltd. 10s. net.

The International Law Association: Report of the Forty-third Conference at Brussels. 1950. pp. cxxi and 318. London: The International Law Association. 30s. net.

The County Court Practice, 1950. Edited by His Hon. Judge EDGAR DALE, a Member of the Standing Committee for Framing Rules; BRUCE HUMFREY, LL.B., Registrar of the County Courts, Croydon Group; R. C. L. GREGORY, LL.B., of Gray's Inn, Barrister-at-Law; WILFRED DELL, formerly Registrar, Mayor's and City of London Court; and F. G. GLANFIELD, LL.B., formerly Senior Registrar, Birmingham County Court. 1950. pp. ccxxiv, 1971 and (Index) 160. London: Butterworth & Co. (Publishers), Ltd.; Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. 67s. 6d.

The Conveyancer and Property Lawyer. Vol. 13 (New Series). Editors: DONALD C. L. CREE, M.A., of Lincoln's Inn, Barrister-at-Law, and HAROLD POTTER, LL.D., of Gray's Inn, Barrister-at-Law. 194 . pp. xi and (with Index) 626. London: Sweet & Maxwell, Ltd. 52s. 6d. net.

A Manual of International Law. By BRIAN GALPIN, M.A., of the Middle Temple and Western Circuit, Barrister-at-Law. 1950. pp. viii and 88. London: Sweet & Maxwell, Ltd. 6s. net.

National Parks and Access to the Countryside. 1950. pp. 16. London: H.M. Stationery Office. 6d. net.

International Law and Human Rights. By H. LAUTERPACHT, K.C., LL.D., F.B.A., Whewell Professor of International Law in the University of Cambridge. 1950. pp. xvi and (with Index) 475. London: Stevens & Sons, Ltd. 50s. net.

NOTES OF CASES

COURT OF APPEAL

RENT RESTRICTION: TENANT'S "FAMILY"

Gammans *v.* Ekins

Evershed, M.R., Asquith and Jenkins, L.JJ.
15th May, 1950

Appeal from Portsmouth County Court.

A dwelling-house within the Rent Restriction Acts was let to a tenant who died in January, 1949. The defendant had been living in the house under the name of Smith, and for several years had passed as the tenant's husband, although in fact they were not married. After the tenant's death the defendant claimed the right to remain in possession under s. 12 (1) (*g*) of the Increase of Rent, etc., Act, 1920, whereby "the expression 'tenant' includes the widow of a tenant who was residing with him at the time of his death or where a tenant leaves no widow or is a woman such member of the tenant's family so residing as aforesaid as may be decided . . . by the county court." The county court judge held that the word "family" was wide enough to cover the defendant, and gave him the right to remain in possession as statutory tenant. The landlord appealed.

ASQUITH, L.J., said that, although the word "family" must be given its full, popular meaning, it would be an abuse of the English language to say that the defendant, who had been masquerading as the tenant's husband, was a member of her family within the meaning of the section.

JENKINS, L.J., agreeing, said that in no reported case had the meaning of the word "family" been extended so far as was now suggested. The defendant was not a member of the tenant's family in any real sense whatever. If the judgment was allowed to stand an alarming vista would be opened up.

EVERSHED, M.R., said that he had found more difficulty in the case than the other members of the court, but on the whole he thought that the appeal should be allowed. If there had been children different considerations would have applied. Appeal allowed.

APPEARANCES: *L. A. Blundell* (*Bower, Cotton & Bower*); *S. J. Collins* (*Kingsford, Dorman & Co.*, for *Blake, Lapthorn, Roberts & Rea*, Portsmouth).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RENT RESTRICTION: TWO FLATS LET TOGETHER

Rice *v.* Capital & Provincial Property Trust, Ltd.

Bucknill and Denning, L.JJ., and Hodson, J.
15th May, 1950

Appeal from Bloomsbury County Court.

In 1934 two adjacent flats, with a communicating door, were let to a tenant at £430 a year. The rateable value of the two flats together took the letting outside the Rent Restriction Acts. In 1939 a similar lease of the two flats was taken by another tenant at £342 10s. a year. During the war the flats were damaged. In 1942 No. 27 was repaired, the communicating door was blocked up, and the flat was separately let at £195 a year. In 1946 the other, No. 28, was repaired and let to the plaintiff at £250 a year. That tenant instituted proceedings under s. 12 (3) of the Rent, etc., Act, 1920, for apportionment of the rent of No. 28. The landlords in those proceedings applied for determination of the standard rent under s. 12 (1) (*a*) of the Act of 1920 as amended by the Rent, etc., Act, 1939. They contended that, as the two flats when let together were outside the Rent Restriction Acts, neither was let within the meaning of s. 12 (1) (*a*) of the Act of 1920 as amended in 1939, on 1st September, 1939, so that each was first let after that date. Accordingly, the standard rents of the separated flats were to be found not by apportionment of the rent of the uncontrolled unit but by taking the rent at which each part was first let, in the case of No. 28 £250 a year.

Judge Dale held that the flats were on 1st September, 1939, "let" within the meaning of s. 12 (1) (*a*), and he made the apportionment which the tenant sought. The landlords appealed. (*Cur. adv. vult.*)

BUCKNILL, L.J., said that the first question was whether flat No. 28, which at all material times was a dwelling-house or part of a dwelling-house, was in fact "let" on 1st September, 1939. He knew of no authority which had laid down that a flat was not let because it had been let with another flat under one lease. On the contrary, the decision of the Court of Appeal in *Upsons* v. *Herne* [1946] K.B. 591; 90 SOL. J. 501, clearly decided the opposite. That decision accorded with the decision of the Court of Appeal in *Sutton* v. *Begley* [1923] 2 K.B. 694. The question whether s. 12 (3) of the Act of 1920 applied where the rateable or rental value of the whole property was outside the Acts was irrelevant. The only relevance of the amount of the rateable value of the whole property was that it was a total sum which it was necessary to apportion in order to see whether the rateable value of the flat in question was within the limits of the Rent Acts now in force. He would dismiss the appeal.

HODSON, J., agreed.

DENNING, L.J., dissenting, said that under the new control of houses which had followed the war of 1939–45 the application of the Rent Restriction Acts depended only on the rateable value and not on the rent. It was therefore no longer "necessary" to apportion the rent of the whole in order to see whether the various parts were within the Acts. It was only necessary to apportion the rateable value. Section 7 (2) of the Act of 1939 made that clear. Once the reason for apportioning the rent disappeared, the right of it also disappeared: *cessante ratione, cessat lex*. His conclusion was that in cases under the new control the question of apportionment depended not only on s. 12 (3) of the Act of 1920, but also on s. 5 of the Rent, etc., Act, 1938, and s. 7 (2) of the Act of 1939. Those two provisions threw much light on the obscurities of s. 12 (3) which had perplexed a previous generation of judges. They showed that rent, as distinct from rateable value, was only to be apportioned when the whole house was within the Acts. The standard rent of each flat was the rent at which each flat was first let. He would have allowed the landlord's appeal. Appeal dismissed.

Leave to appeal.

APPEARANCES: *L. A. Blundell* (*Stephenson, Harwood & Tatham*); *R. Fortune* (*Laytons*).

[Reported by R. C. CALBURN, Esq., Barrister at Law.]

COUNTY COURT JURISDICTION: SPECIFIC PERFORMANCE OF AGREEMENT

Bourne *v.* McDonald

Evershed, M.R., Somervell and Asquith, L.JJ.
22nd May, 1950

Appeal from Hanley and Stoke-on-Trent County Court.

A dispute between the plaintiffs and the defendant as to the boundary between their respective domains was compromised on terms that the defendant should erect a fence in a certain position. He failed to do so. The county court judge held that he had no jurisdiction to grant specific performance in such a case. The plaintiffs appealed. By s. 40 (1) of the County Courts Act, 1934: "A county court shall have jurisdiction to hear and determine any action founded on contract or on tort where the debt, demand or damages claimed is not more than £100, whether on balance of account or otherwise; . . ."

EVERSHED, M.R., said that s. 52 (1) (*d*) of the County Courts Act, 1934, limited the jurisdiction of the court to granting specific performance, so far as the enforcement of contracts was concerned, "of any agreement for the sale, purchase or lease of any property." In view of this, it was argued, and the judge had held, that the present proceedings for specific performance were outside the jurisdiction of the county court altogether. That apparently capricious result might have arisen if s. 52 had stood without s. 71. Section 71 gave the county court, with regard to any cause of action within its jurisdiction, power to "grant such relief, redress or remedy . . . as ought to be granted or given in the like case by the High Court." It seemed to follow that, in any cause of action covered by s. 40, the county court could give any remedy open to a High Court judge in a similar action. Further, if the court could grant an ordinary injunction, it could also make a mandatory order; and the making of a mandatory order upon a party to do an act contracted for was in ordinary language an order for specific performance such as was asked for in this action. The possible conflict with s. 52 was resolved when regard was had to the fact that s. 52 was directed not to particular remedies but to particular proceedings well known in the Chancery Court of a type in which *ex hypothesi* no sum of damage would be claimed. It left the general proposition that there was nothing limiting the right of the court by virtue of s. 71 to grant any remedy that justice might require in an action for breach of contract.

SOMERVELL and ASQUITH, L.JJ., agreed. Appeal allowed.

APPEARANCES: *E. Brian Gibbens* (*Gibson & Weldon*, for *W. B. Whitehead*, Newcastle-under-Lyme); *Norman Carr* (*Doyle, Devonshire & Co.*, for *Abberley & Walker*, Stoke-on-Trent).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

EXCESS PROFITS TAX: "PROPRIETOR"

Inland Revenue Commissioners *v.* T. W. Law, Ltd.

Romer, J. 26th May, 1950

Case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

The question at issue was whether, for the purpose of reducing the liability of the respondent company to excess profits tax, two of its shareholders were "proprietors." By s. 13 (2) of the Finance (No. 2) Act, 1939, as amended by s. 31 of the Finance Act, 1940, £1,500 may be added in respect of each "working proprietor" in the computation of standard profits, and "'proprietor' means, in the case of a . . . company, any director thereof owning more than one-twentieth of the share capital of the company." All but fifteen of the 1,500 £1 shares of the company were held by a mother and her two sons as trustees jointly under a deed of family arrangement. All three worked full time in the business. The mother's name appeared first in the register of members. By art. 55 of Table A of the Companies Act, 1929, which applied to the company: "In the case of joint holders the vote of the senior who tenders a vote . . . shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members." The Inland Revenue Commissioners refused to accept the two sons as "proprietors." The Special Commissioners held that they were. The Crown appealed. (*Cur. adv. vult.*)

ROMER, J., said that, while the Crown adhered to the concession in favour of the widow that she was a proprietor, they contended that she was not, in strictness, a proprietor either, as the reference in s. 13 (2), as amended, to "owning" the share capital of a company meant owning beneficially and not merely as a trustee. He approached the matter on the assumption that a person might "own" capital for the purposes of the section in a representative, as distinct from a beneficial, capacity. On that assumption it had been argued for the company that the sons and the widow were joint tenants of the trust holding of 1,458 shares; that the interest of each joint tenant was an interest in an undivided whole; and accordingly that it might be said in law that each of the trustees owned the entirety of the trust holding. He was quite unable to accept that argument. The fact that a joint tenant had a legal interest in the entirety of the subject-matter of the joint tenancy seemed to him to be far removed from the conception that each tenant owned the subject-matter, whatever meaning might be attributed to the word "own." It was difficult to think of any act of ownership in relation to the shares which either of the sons could perform on his own: he could not sell them, transfer them, mortgage them or give a discharge to the company for dividends declared on them. He could not exercise any control in respect of them, for the voting rights attached to the shares were exercisable primarily by the widow (a fact which might justify logically the discriminatory concession in her favour). If, then, a man were unable to perform any of the acts of ownership over or in relation to shares, how could it be said that he owned them? In his opinion, what each of the sons owned was not the trust holding or any ascertainable portion of it, but an interest, commensurate with the interests of each of his co-trustees, in the entirety of the trust shares. That interest was, in his opinion, not within the scope of ownership prescribed by s. 13 (2), as amended, and the appeal should be allowed. Appeal allowed.

APPEARANCES: *Sir Andrew Clark*, K.C., *J. H. Stamp* and *R. P. Hills* (*Solicitor of Inland Revenue*); *J. Charlesworth* (*Gibson, Thompson & Gascoigne*, Newcastle-on-Tyne).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

DIVISIONAL COURT

JUSTICES: INVALID COMMITTAL TO QUARTER SESSIONS FOR SENTENCE

R. *v.* Norfolk Justices, *ex parte* Director of Public Prosecutions

Lord Goddard, C.J., Humphreys, Byrne, Morris and Finnemore, J.J. 3rd May, 1950

Application for an order of mandamus.

Justices, sitting at South Greenhoe Petty Sessions, purporting to act under s. 29 of the Criminal Justice Act, 1948, committed a convicted defendant to quarter sessions for sentence in a case where they had no power to make such an order of committal. Quarter sessions discharged the defendant, and the Director of Public Prosecutions applied for an order of mandamus directing the justices of petty sessions to hear and determine the charges against the defendant according to law. Counsel for the defendant referred to the rule that, once a court had given judgment, no alteration of that judgment could take place save on appeal, and submitted that the justices here had given a judgment within the meaning of that rule. Where there was a valid conviction and the justices made an order by way of disposal of the case, even if it was outside their jurisdiction, there was a judgment, the justices were *functi officio*, and no further proceedings could be taken.

LORD GODDARD, C.J., said that it had been urged in an attractive argument on behalf of the defendant that the justices had given a judgment. In his (his lordship's) opinion there had been no judgment. No blame could be attached to the justices, but the case was in fact not disposed of. Until judgment had been given the hearing was not concluded. The justices had sent the case forward to quarter sessions for them to pass judgment *in lieu* of a judgment which the committing justices might have passed themselves. A judgment was necessarily something which finally disposed of matters between the parties. There had been no adjudication here, and the justices were accordingly not *functi officio*.

The next question was what should be done. The case was really in the position in which it would have been if the justices, instead of committing the defendant to quarter sessions, had convicted him, but had not then given judgment but had adjourned the case. The justices must therefore finish the case, and notice must be given to the defendant that on a named date the court would proceed further to hear the case. The case would be concluded once the defendant had been dealt with. The right order for the court to make accordingly was one of mandamus directing the justices to impose sentence on the defendant. The other members of the court concurred.

Order of mandamus.

APPEARANCES: *Sir Hartley Shawcross*, K.C. (*A.-G.*), and *Harold Brown* (*D.P.P.*); *Christmas Humphreys* (*Treasury Solicitor*); *J. P. Widgery* (*Metcalfe, Copeman and Pettefar*) (defendant).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

ROAD TRAFFIC: SPEEDOMETER TESTS

Nicholas *v.* Penny

Lord Goddard, C.J., Humphreys and Morris, JJ.
9th May, 1950

Case stated by Wiltshire Justices.

A police constable, alone in a police car, followed the defendant for four-tenths of a mile with his (the officer's) speedometer showing an even speed of 40 m.p.h. though there was a speed limit of 30 m.p.h. Before and after the incident the police speedometer was tested by police officers by means of a stop-watch and found to be correct. The officer who had followed the defendant was the only witness for the prosecution. The justices convicted the defendant, but sought the opinion of the court whether the officer's evidence as to the speedometer tests, in the course of which he relied on the observations of and information given by other officers who did not give evidence, was rightly admitted.

LORD CODDARD, C.J., said that the tests of the speedometer in question were not really made by the officer who had followed the defendant, but by two other officers. The justices had asked whether the constable's evidence as to those tests was admissible, and whether they had come to a correct decision in point of law. The justices were really asking the court whether hearsay was admissible. Of course, it was not. But the case raised a further question: by s. 2 (3) of the Road Traffic Act, 1934: "A person prosecuted for driving a motor-vehicle on a road at a speed exceeding a speed limit . . . shall not be liable to be convicted solely on the evidence of one witness to the effect that in the opinion of the witness the person prosecuted was driving the vehicle at a speed exceeding that limit." *Russell* v. *Beesley* (1937), 53 T.L.R. 298, decided that it was unnecessary for such an offence to be proved by the evidence of more than one police officer provided that his opinion were supported by a speedometer reading by him. In that case the speedometer was proved to be accurate. *Melhuish* v. *Morris* (1938), 82 SOL. J. 854, had decided that, in such a case, evidence must be given of the accuracy of the speedometer and that the evidence of one police officer could only be relied on if the speedometer was tested. He thought that that decision went too far. He did not say that the court might differ from a previous decision of the Divisional Court merely because no counsel had there been instructed for the police; but *Young* v. *Bristol Aeroplane Co., Ltd.* [1944] K.B. 718; 88 SOL. J. 332, showed that the court might differ from an earlier decision by it if, on that earlier occasion, previous relevant cases had not been cited. Two cases cited to-day might have had a material influence on the court which decided *Melhuish* v. *Morris, supra*. *Gorham* v. *Brice* (1902), 18 T.L.R. 424, and *Plancq* v. *Marks* (1906), 22 T.L.R. 432, showed that, where the speed was proved by a constable using a stop-watch over a measured distance, the accuracy of the stop-watch need not be proved. There was no difference in principle between a stop-watch and a speedometer. If a watch recorded a time which was *prima facie* evidence, on which a court might act, of that time, so also if a speedometer recorded a speed. Those two cases seemed to show that the judgments of Charles, J., and Lord Hewart, C.J., in *Melhuish* v. *Morris, supra*, went too far. The question was whether, if a police officer said that he had followed the car at an even distance, and that his speedometer showed a certain speed, the justices could act on that evidence without proof of the accuracy of the speedometer. The case would therefore be remitted to the justices for them to say whether they would have been satisfied that the defendant was in fact travelling at over 30 miles an hour, apart from the evidence of these speedometer tests which had been held to be hearsay and were not admissible.

HUMPHREYS and MORRIS, JJ., agreed. Case remitted.

APPEARANCES: *N. J. Skelhorn* (*McKenna & Co.*); *J. P. Widgery* (*Collyer-Bristow & Co.*, for *P. A. Selborne Stringer*, Trowbridge).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SUBMISSION OF NO CASE: ELECTION

Young *v.* Rank and Others

Devlin, J. 18th May, 1950

Action tried by Devlin, J., with a City of London special jury.

The plaintiff claimed damages for misrepresentation or breach of warranty, conspiracy and wrongful dismissal. At the close of his case it was submitted for the defence that on the issues of misrepresentation or breach of warranty and of conspiracy there was no evidence to go to the jury. The submission was accepted, and the question then arose whether the defence must be put to election whether or not to call evidence. The case is reported on that point only.

DEVLIN, J., said that he had not, when counsel for the defence made the submission of "no case," put him to election whether he would call any evidence, and consequently counsel had made no election. It was argued, he (his lordship) thought, rightly, that he had a discretion whether or not to put counsel for the defence to his election. He had thought it right to consider the authorities in order to determine whether or not he had taken the right course. But for the *dictum* of Goddard, L.J., in *Parry* v. *Aluminium Corporation, Ltd.* [1940] W.N. 44, as accepted by the Court of Appeal in *Laurie* v. *Raglan Building Co., Ltd.* [1942] 1 K.B. 152, there would have been no doubt that in jury actions the judge had a discretion whether to require counsel to elect (see the decision of the Court of Appeal in *Marbé* v. *George Edwardes* (*Daly's Theatre*), *Ltd.* [1928] 1 K.B. 269). The judgment of Goddard, L.J., had not been reserved. He (Devlin, J.) did not think that it was intended to overrule the practice recognised in *Alexander* v. *Rayson* [1936] 1 K.B. 169. He therefore came to the conclusion that he had a discretion in this matter, and in the exercise of it he had not required counsel to make a final election as to the calling of evidence.

APPEARANCES: *Fearnley-Whittingstall*, K.C., *Clive Burt* and *Ian Warren* (*Warren & Warren*); *Sir Walter Monckton*, K.C., and *T. G. Roche* (*Richards, Butler & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DETINUE: GOODS IN JUDGMENT DEBTOR'S POSSESSION

Curtis *v.* Maloney; R. Cheke & Co. and Another, Third Parties

Finnemore, J. 24th May, 1950

Action.

The plaintiff entrusted his ship to a firm to sell. The sheriff of the county seized the vessel in execution of a writ of *fi. fa.* which had been issued against the firm. No claim to the ship was made by her owner, and she was sold to the defendant at a public auction sale. The plaintiff claimed the return of the vessel, or her value, and damages for

detention. By s. 15 of the Bankruptcy and Deeds of Arrangement Act, 1913: "Where any goods in the possession of an execution debtor at the time of seizure by a sheriff . . . are sold by such sheriff . . . without any claim having been made to the same, the purchaser of the goods so sold shall acquire a good title to the goods so sold . . . Provided that nothing in this section contained shall affect the right of any claimant who may prove that at the time of sale he had a title to any goods so seized and sold to any remedy to which he may be entitled against any person other than such sheriff . . ."

FINNEMORE, J., said that s. 15 of the Act of 1913 was difficult to construe. The material parts were, first, the words "the purchaser of the goods so sold shall acquire a good title to the goods so sold," and secondly the proviso. It was argued for the plaintiff that the purpose of the section was to give to the sheriff a protection which he had not enjoyed before; that consequently the proviso left open every possible right to the true owner against everybody except the sheriff; and that that included a right against the innocent purchaser of the goods to whom previously the section had purported to give a good title. For the defendant it was contended that the proviso must be limited, since, if it were construed in the way for which the plaintiff contended, no meaning could be given to the acquisition of a good title by the purchaser of the goods sold by the sheriff after seizure; and that the section provided that the purchaser of the goods so sold should acquire a good title, whereas he could not do so if the true owner could in fact assert against him his better title and claim back the goods bought by the purchaser from the sheriff. *Jones Brothers (Holloway), Ltd.* v. *Woodhouse* [1923] 2 K.B. 117 did not assist. His lordship said that in his opinion s. 15 provided as plainly as possible that "the purchaser of the goods so sold shall acquire a good title" to the goods so sold; and a good title must mean exactly what it said and be a good title against everybody, including the person who might at a later date show that he had a better title as being in fact the true owner. The section went on to exempt from any liability the sheriff who had by his sale given that good title to the innocent purchaser, and then followed the proviso. He thought that the true owner was the person meant by "any claimant who may prove that at the time of sale he had a title to any goods"; and the proviso reserved to him any remedy to which he might be entitled against anybody other than the sheriff. He was of opinion that that proviso must be read subject to the earlier enactment that the purchaser of the goods so sold should acquire a good title; otherwise it made meaningless the earlier part of the section. It was valueless for a statute to give a man a good title except as against the true owner who could prove his better title. The objects of the section were, first, to protect the innocent purchaser who bought from the sheriff; secondly, because of that, to protect the sheriff against any action; and, thirdly, to preserve to the true owner whatever other rights he had by action against anybody except the sheriff. The plaintiff was not entitled to sue the defendant in detinue and his action failed. Judgment for the defendant.

APPEARANCES: *Glyn-Jones*, K.C., and *Chedlow* (*R. I. Lewis and Co.*); *Peter Bristow* (*White & Leonard*, for *H. M. Pinney*, Hornchurch); *Beresford*, K.C., and *Pensotti* (*Gedge, Fiske and Co.*, for *Mullis & Peake*, Romford).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION

SALVAGE SERVICES DURING WAR: LIMITATION

"The Atlantic Scout"

Willmer, J. 10th May, 1950

Motion to set aside a writ.

French salvors rendered salvage services to an English ship in January, 1940, and sought in 1950 to recover by action in England the sum due to them. By the Limitation (Enemies and War Prisoners) Act, 1945, the two years in which the salvors had to bring their action under the Maritime Conventions Act, 1911, were deemed not to run while they were an "enemy" or detained in enemy territory. By s. 2 of the Act of 1945 "enemy" was defined by reference to s. 2 of the Trading with the Enemy Act, 1939, "except that in ascertaining whether a person is such an enemy the expression 'enemy territory' in s. 2" of the Act of 1939 "shall have the meaning assigned to it by this section." Section 2 of the Act of 1939 defined an enemy as, among others, "(*b*) any individual resident in enemy territory," and "(*c*) any body of persons (whether corporate or incorporate) carrying on business in any place, if and so long as the body is controlled by a person who, under this section, is an enemy." The French salvors were such a body corporate. Section 2 (1) (*c*) of the Act of 1945 defined "enemy territory" as "any area which, by virtue of reg. 6 or reg. 7 of the Defence (Trading with the Enemy) Regulations, 1940, or any order made thereunder, is treated for any of the purposes of the said Act as enemy territory as so defined or such territory as is referred to in the last foregoing paragraph" (para. (*b*)). S.R. & O., 1943, No. 1034, was so made. By art. 6 (1) of that order: "Where, after the coming into force of this regulation, any area ceases to be enemy territory as defined in the principal Act (whether by reason of the occupation thereof by His Majesty, . . . or by reason of its being no longer in the occupation of a Power with whom His Majesty is at war, or for any other reason) that area shall, for the purposes of ss. 3 (A), 4, 5 and 7 of the principal Act . . . and, save as expressly provided by any such order, for the purposes of any order made under the said s. 7, be treated as if, until such time as the Board of Trade may by order specify, there has been no cessation."

WILLMER, J., said that, as it was not disputed that the Board of Trade had never by order specified the cessation of the order of 1943, it appeared to him that the effect of that order, when considered in relation to the definition of "enemy territory" in the Act of 1945, led inevitably to the conclusion that, for some purposes, France remained "enemy territory" within the meaning of that Act. The conclusion seemed unavoidable that, so long as that state of affairs persisted, time was not running against the plaintiff shipowners; they had a good legal right, in 1950, to sue here. They were no longer "enemies" at common law; nor could they commit any offence against the Trading with the Enemy Act, 1939. In those circumstances it appeared impossible to say that the writ should be set aside, and the motion would be dismissed. Motion dismissed.

APPEARANCES: *H. V. Brandon* (*Stocken, May, Sykes and Dearman*); *Vere Hunt* (*Clyde & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CRUELTY: HUSBAND INSANE

Lissack *v.* Lissack

Pearce, J. 26th May, 1950

Petition for divorce.

The wife charged her husband with cruelty. The only specific charge of cruelty was that he had killed the only child of the marriage and subsequently attempted to kill himself. He was charged with the murder of the child, was found by a jury to be guilty but insane, and was now confined in a criminal lunatic asylum. By his guardian *ad litem* he denied cruelty and alleged in the alternative that, if he was guilty of cruelty, he knew neither the nature nor quality of the act, that he did not know that it was wrong, and that he was not responsible for it.

PEARCE, J., said that medical evidence had shown that the shock of what had occurred had had a very great effect on the wife's health and nerves. Unless the husband's insanity were a defence, the wife was clearly entitled to relief, since there could be no greater cruelty to a mother

than the killing of her only child. The cases which had been cited in argument included *Hanbury* v. *Hanbury* [1892] P. 222 and *White* v. *White* [1950] P. 39. It was for the husband to establish that a legal defence of insanity existed in matrimonial cases. It had sometimes been assumed to exist. In criminal proceedings, where the object of the proceedings was to punish the wrongdoer, such a defence was necessary in a just society; but he (his lordship) did not think that that was a safe analogy. The function of the divorce court was to protect the petitioner rather than to punish the respondent. Basing himself on those considerations, and on the judgment of Denning, L.J., in *White* v. *White*, *supra*, he could not find that the defence of insanity was open to the husband here, and he would accordingly pronounce a decree in favour of the wife. Decree *nisi*.

APPEARANCES: *Tyndale*, K.C., and *T. Dewar* (*T. C. Boyes, Law Society Services Divorce Dept.*); *Stuart Horner* (*Official Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister at Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time:—

Aberdeen Harbour Order (Confirmation) Bill [H.C.] [29th June.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to Aberdeen Harbour.

Pier and Harbour Provisional Order (Caernarvon) Bill [H.C.] [29th June.

Pier and Harbour Provisional Order (Cattewater) Bill [H.C.] [29th June.

Pier and Harbour Provisional Order (Hartlepool) Bill [H.C.] [27th June.

South Shields Extension Bill [H.C.] [29th June.

Read Second Time:—

Air Force Reserve Bill [H.L.] [27th June.

Arbitration Bill [H.L.] [29th June.

To consolidate the Arbitration Acts, 1889 to 1934.

Army Reserve Bill [H.L.] [27th June.

Cardiff Extension Bill [H.C.] [28th June.

Foreign Compensation Bill [H.C.] [27th June.

Housing (Scotland) Bill [H.L.] [27th June.

Ilford Corporation Bill [H.C.] [29th June.

Ipswich Dock Bill [H.C.] [28th June.

Lee Conservancy Catchment Board Bill [H.C.] [29th June.

Liberties of the Subject Bill [H.L.] [27th June.

Towyn Trewan Common Bill [H.C.] [28th June.

Wolverhampton Corporation Bill [H.C.] [29th June.

Read Third Time:—

Distribution of Industry Bill [H.C.] [27th June.

Merchant Shipping Bill [H.C.] [27th June.

Middlesex County Council Bill [H.L.] [28th June.

Royal Patriotic Fund Corporation Bill [H.C.] [27th June.

In Committee:—

Coal Mining (Subsidence) Bill [H.C.] [29th June.

B. DEBATES

On the second reading of the **Liberties of the Subject Bill,** LORD SAMUEL said that over the last thirty or forty years there had been a gradual encroachment upon the liberty of the individual. One great cause had been the two world wars in which statutes had been passed by Parliament, sometimes in a single day, conferring immense powers on Ministers to make regulations on all manner of subjects which the citizen was obliged to obey on pain of fine or imprisonment. The second great cause had been the rapid growth of State action. No party now supported *laissez-faire* as a universal principle, and it was agreed that adequate power must be given to prevent evasion of the law.

Clause 1 of the Bill proposed to enable statutory instruments made under the Supplies and Services Act to be amended in a form agreed to by both Houses. At present Parliament could either accept or reject, but could not amend, orders laid before it. The purpose of cl. 2 was to enable the validity of any order to be challenged in the courts, notwithstanding any provision to the contrary in the statute under which it was made. Clause 3 would carry into effect the Report of the Committee on Ministers' Powers inasmuch as it would prohibit Ministers and departments from amending or modifying the provisions of an Act by means of a statutory instrument made under the Act. By cl. 4 an appeal to the High Court would be permitted on all points of law decided by the Minister or any tribunals. Clause 5 required the Minister to publish the report of every public local inquiry, and, where he differed from the inquiry, to give reasons for his decision. Persons demanding entry to buildings, as of right, would be required by cl. 6 to produce duly authenticated authority for the entry. Clause 7 provided that nothing in the Supplies and Services (Transitional Powers) Act, 1945, as amended, should be held to authorise the suppression of any newspaper, periodical, book or other publication.

Under cl. 8, power to inflict penalties would be removed from the marketing boards set up under the Agricultural Marketing Acts, 1931–39, and the Sea Fish Industry Act, 1938, and given to the ordinary courts of summary jurisdiction. Litigation against public authorities would, by cl. 9, be subject to the same periods of limitation and the same rules as to costs as litigation against private individuals. This clause followed the recommendations of the Tucker Committee on the Limitation of Actions, whose report was published last year.

Clause 10 would give anyone who felt he had been unjustly or oppressively treated by a nationalised concern power to appeal to the responsible Minister, who could call for an explanation, and if not satisfied therewith could make such order as he saw fit. Clause 11 would prohibit any employer from making it a condition of employment that an employee should hold or should not hold certain religious or political views. This clause would not apply to any organisation whose principal business was the propagation of one particular religious or political viewpoint. Clause 12 provided that Commonwealth troops in this country should have British right of habeas corpus, although otherwise subject to their own laws, civil and military.

Supporting the Bill, LORD LLEWELLIN said one of the fields in which an appeal was especially needed was in cases under the Furnished Houses (Rent Control) Act. The Bill would provide a co-ordinating body—the High Court of Justice. On the subject of public inquiries, Lord Llewellin said it was quite wrong that the department wanting to get the thing done did not itself have to go into the witness-box and state why it wanted to do the thing in this particular place or this particular way.

The LORD CHANCELLOR thought that the Bill set forth a string of spurious remedies to deal with a very real problem. It was very important that the problem should be raised, but what were the real remedies? First, a vigilant, resolute and strong Parliament. Secondly, there must be a strong and independent judiciary in sufficient numbers to be able to deal promptly with cases brought before the courts. The law must also be made more readily available to the people by the elimination of delay, the reduction of the expense of litigation and, if necessary, the providing of help from public funds. There must also be a simplification of the law. The Government had already made a notable contribution to the liberty of the subject. The Crown Proceedings Act had been passed: legal aid would partly come into force this year; a substantial start had been made in the simplification of the law by the Consolidation Bills. A new edition of the Statutes of the Realm would soon be issued, the first since 1927, reduced in bulk from fifty-two volumes to thirty-seven. To expose every statutory instrument to amendment in Parliament would be to create an obstructionist's paradise. The present Statutory Instruments Committee scrutinised every such instrument and if they thought there was any reason to do so could draw the attention of the House of Commons to it.

If orders were to be challenged as *ultra vires*, it was essential that a time limit should be fixed for such challenge of, say, three months, as recommended by the Donoughmore Committee. In

fact since 1930 no Bill had been passed which prevented a challenge of this sort being made. Power to Ministers to alter statutes had been given on many occasions. For example, when India became a Republic, power had been given to the Minister to alter a host of Acts in which India was referred to as being under the King. Every year about twenty regulations altering statutes had to be made, and no one had ever suggested that anyone had been wronged, aggrieved or hurt in any way thereby. If Parliament were called on to do this alteration work it would merely be another piece of wholly unnecessary labour for Parliament. With regard to cl. 4, he agreed that as a broad general rule, whenever a Minister was dealing with a judicial or quasi-judicial function, it was right that there should be an appeal to the courts. He agreed with the Donoughmore Committee that the report of a public inquiry of a judicial nature should always be published, but that committee had not said that reports of administrative determinations should necessarily be published. With regard to the Statute of Limitations and public authorities, he agreed that the period should be the same whatever the status of the defendant, but he thought it should be six years for everyone in contract and three years for everyone in tort. Sooner or later this Government or its successor would have to deal with this matter. [27th June.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Edinburgh Corporation Order Confirmation Bill [H.C.] [30th June.

To confirm a Provisional Order under the Private Legislation Procedure Bill (Scotland) Act, 1936, relating to Edinburgh Corporation.

Read Second Time :—

Agriculture (Miscellaneous Provisions) Bill [H.C.] [30th June.

Cinematograph Film Production (Special Loans) Bill [H.C.] [29th June.

Colonial and Other Territories (Divorce Jurisdiction) Bill [H.L.] [30th June.

Darlington Corporation Trolley Vehicles (Additional Routes) Provisional Order Bill [H.C.] [28th June.

Derby Corporation Bill [H.L.] [26th June.

Dover Corporation Bill [H.L.] [26th June.

Dover Harbour Bill [H.L.] [26th June.

Gloucester Extension Bill [H.L.] [26th June.

Medical Bill [H.L.] [27th June.

Miscellaneous Financial Provisions Bill [H.C.] [28th June.

Plymouth Extension Bill [H.L.] [26th June.

Wisbech Corporation Bill [H.L.] [26th June.

Read Third Time :—

Gateshead and District Tramways Bill [H.L.] [26th June.

Midwives (Amendment) Bill [H.L.] [28th June.

Pier and Harbour Provisional Order (Great Yarmouth) Bill [H.C.] [30th June.

Pier and Harbour Provisional Order (Workington) Bill [H.C.] [30th June.

Public Registers and Records (Scotland) Bill [H.L.] [27th June.

B. Debates

On the Committee stage of the **Finance Bill,** Mr. Manningham-Buller asked the Solicitor-General for an assurance that cl. 34 (Disposition or determination of life interests, etc.) as it now stood, or rather the position as now set out, he said, in Pt. II of Sched. IV, did not affect the general provisions relating to gifts *inter vivos* made more than five years before the death of the donor. Secondly, lines 31 and 32 on p. 29 of the Bill referred to disposition or determination. What exactly was meant by a determination? Views on that question had differed in the past. In 1947 the view expressed in Green's Death Duties was that where the life-tenant had acquired the reversion or an annuitant had acquired a property subject to his annuity, and his life interest merged in the absolute interest, that merger constituted a determination. The 1949 edition of the same book, however, expressed exactly the opposite view. It was there stated that where a life-tenant acquired the reversion or an annuitant acquired a property charged with an annuity, the official view was that the merger did not constitute a determination within the meaning of s. 43 of the Finance Act, 1940. The property was therefore liable to estate duty on the death of the former life-tenant only as part of his estate or under some fresh disposition. Did the clause go further than merely deal with the avoidance devices revealed in the *St. Aubyn* case?

In reply, Sir Frank Soskice said the new Schedule introduced by s. 34 (1) did not merely stop up the gaps disclosed in s. 43 of the Finance Act, 1940, by the first of the *St. Aubyn* cases. The clause did not in any way affect the general provisions governing gifts *inter vivos* made within five years before the death of the donor. All that the clause did, in regard to disposition of life interests and reservation of the benefit in the case in which, for the purpose of avoidance of estate duty, they had been artificially put asunder or separated, was simply to stop up a possible evasion which could be effected by the separation of the two. With regard to the meaning of the word "determination," the second interpretation in "Green" was the one quite definitely held by the Revenue authorities after very careful consideration by counsel who specialised in these matters. Where the life-tenant surrendered his life interest to the remainderman there was a merger of the life interest which was enlarged into the remainderman's interest. There was no determination, but simply a merger. [19th June.

C. Questions

Mr. G. R. Strauss said there had been a certain amount of abuse in the method of supplying motor cars to purchasers in the home market. He had been in touch with the Society of Motor Manufacturers and Traders who had agreed to try and tighten up their controls. He was satisfied that the reintroduction of a statutory control would not be justified. [26th June.

In reply to a large number of questions, the Attorney-General stated that the Report of the Committee on Leaseholds had been delivered to the Lord Chancellor on 12th June, and it would be made public in the course of the next few days. The whole matter, as would appear from the report, was one of great complexity, but the Government was giving it urgent consideration. [26th June.

Mr. Chuter Ede stated that since 1st January, 1920, 258 free pardons had been granted by the King on the recommendation of the Home Secretary. [26th June.

Sir Stafford Cripps declined to review the rules for payment of income tax and Pay As You Earn, so that, in the case of court maintenance orders, tax would be paid by the offending party and not by the injured party. [27th June.

Mr. Austin Albu asked whether the Minister of Health would (1) consider the possibility of giving local authorities power to control accommodation vacated by residents moving into houses in new towns which were subsidised out of the local authorities' rates; (2) be prepared to give local authorities power to control the reletting of houses occupied by old people who could be more suitably housed in newly built old people's houses. Mr. Bevan said he did not think legislation could be appropriately introduced for these purposes. He would look at the first-mentioned matter again, but it might easily be that people would be loath to transfer themselves to a new town if, immediately on transfer, the houses fell into somebody else's hands. [29th June.

STATUTORY INSTRUMENTS

Carlisle–Sunderland Trunk Road (Felling By-Pass) Order, 1950. (S.I. 1950 No. 1017.)

Control of Timber (No. 54) Order, 1950. (S.I. 1950 No. 1035.)

District Registries Order in Council, 1950. (S.I. 1950 No. 1042.)
Recent alterations in the districts of certain county courts have rendered necessary a redivision of the districts of district registries, and a revision of the places in which district registries are situated. This order carries out these changes.

Education (Scotland) Fund Bursaries Regulations, 1950. (S.I. 1950 No. 1014.)

Fertilisers (Charges) Order, 1950. (S.I. 1950 No. 1039.)

Housing (Rate of Interest on Repaid Improvement Grants) (Scotland) Regulations, 1950. (S.I. 1950 No. 1057.)

Kitchen Waste (Licensing of Private Collectors) (Extension) Order, 1950. (S.I. 1950 No. 1009.)

London Traffic (Prescribed Routes) (No. 9) Regulations, 1950. (S.I. 1950 No. 1021.)

Milk Marketing Scheme (Amendment) Order, 1950. (S.I. 1950 No. 1029.)

Native Cattle Hides and Calf Skins (Revocation) Order, 1950. (S.I. 1950 No. 1054.)

Newsprint (Prices) (Amendment) Order, 1950. (S.I. 1950 No. 1033.)

Paper (Prices) (No. 2) Order, 1950. (S.I. 1950 No. 1034.)

Plywood Prices (Amendment No. 2) Order, 1950. (S.I. 1950 No. 1036.)

Raw Cocoa (Amendment) Order, 1950. (S.I. 1950 No. 1018.)

Retention of Pipe Under Highway (Somerset) (No. 1) Order, 1950. (S.I. 1950 No. 1041.)

Royal Auxiliary Air Force (No. 2) Order, 1950. (S.I. 1950 No. 1043.)

South Devon Water Order, 1950. (S.I. 1950 No. 1031.)

Stopping up of Highways (Cornwall) (No. 1) Order, 1950. (S.I. 1950 No. 1022.)

Stopping up of Highways (Devonshire) (No. 1) Order, 1950. (S.I. 1950 No. 1016.)

Stopping up of Highways (Long Kesh) (Northern Ireland) Order, 1950. (S.I. 1950 No. 1028.)

Telegraph (British Commonwealth and Foreign Written Press Telegram) Regulations, 1950. (S.I. 1950 No. 1024.)

Telegraph (British Commonwealth and Foreign Written Telegram) Regulations, 1950. (S.I. 1950 No. 1023.)

Threshing (Revocation) Order, 1950. (S.I. 1950 No. 1052.)

Transfer of Functions (Sale of Food) Order, 1950. (S.I. 1950 No. 1044.)

Truro Water Order, 1950. (S.I. 1950 No. 1050.)

Utility Apparel (Women's Domestic Overalls and Aprons) (Manufacture and Supply) (Amendment No. 3) Order, 1950. (S.I. 1950 No. 987.)

Utility Corsets (Manufacture and Supply) (Amendment) Order, 1950. (S.I. 1950 No. 988.)

Utility Handkerchiefs (Maximum Prices) (Amendment No. 5) Order, 1950. (S.I. 1950 No. 1032.)

Utility Quilts (Manufacture and Supply) Order, 1950. (S.I. 1950 No. 1048.)

Utility Woven Cloth (Wool and Animal Fibre) (Marking, Supply and Manufacturers' Prices) (Amendment) Order, 1950. (S.I. 1950 No. 1002.)

Wallerscote Light Railway Order, 1950. (S.I. 1950 No. 1007.)

Women's and Maids' Nylon Hose (Maximum Prices) (Amendment) Order, 1950. (S.I. 1950 No. 1004.)

NON-PARLIAMENTARY PUBLICATIONS

Town and Country Planning Circular No. 90.

This circular, addressed to all local authorities, makes administrative changes consequent upon the Town and Country Planning (Grants) Amendment Regulations, 1950, which enable local authorities to use the services of their own valuers in certain cases instead of those of the district valuer.

REVIEWS

Joint Obligations. By GLANVILLE L. WILLIAMS, LL.D. (Cantab.), of the Middle Temple, Barrister-at-Law, Professor of Public Law, University of London. 1949. London: Butterworth & Co. (Publishers), Ltd. 21s. net.

This is another of those monographs on important but rather eclectic topics in which Dr. Williams seems to be specialising, to the great benefit, be it said, of legal literature. The book is confined to joint obligations in contract, *quasi*-contract and trusts, the omission of tortious obligations being sufficiently explained by the mention in footnotes of the author's forthcoming "Concurrent Fault," for which the reader's appetite is certainly whetted by the present work.

Let no one suppose that this book is a mere academic essay. The various rules affecting the liability of joint contractors and co-trustees are frequently of great day-to-day importance, and the author everywhere gives full consideration and treatment to the practical issues. A novel and most useful feature is the introductory outline of the work which admirably supplements the index and guides the busy practitioner to the passage he seeks in the main text. Yet Dr. Williams' academic leanings are (we don't say it reproachfully) betrayed in his surprise (p. 100) at finding substantive rights governed by rules of procedure and by a certain breadth in his approach to the subject. Indeed, from the sub-title, we see that the treatise is to cover England, Ireland and the Common Law Dominions. Nevertheless there is little or nothing that our readers will not find profitable for study and reference.

Sutton and Shannon on Contracts. Fourth Edition. By RALPH SUTTON, K.C., M.A., Reader in Common Law to the Council of Legal Education, and N. P. SHANNON, of Gray's Inn, Barrister-at-Law. 1949. London: Butterworth and Co. (Publishers), Ltd. 16s. 6d. net.

The modern generation of solicitors is well acquainted with the merits of this book, which has long been prescribed or recommended for the Intermediate Examination. Its classification and layout could scarcely be bettered from the point of view of the student, and the reviewer knows of several fully fledged members of the profession who keep an old, well-thumbed copy at hand for consultation on points of principle which arise in their practices. The only criticism to be made of this course of action is that the old copy ought in common prudence to be replaced by this latest edition.

The authors emphasise in their preface that the work is concerned solely with the elements of the general law of contract, and few will quarrel with their consequent decision not to overburden the already copious collection of illustrations with notes of cases of which the only distinction is that they have been recently decided. But there is no dearth of new material, for all that. These illustrations by the way form one of the book's chief virtues. To summarise the salient facts of a case like *Fibrosa Spolka* so as to lead to the real point of the decision is by no means the least exactign of the tasks of legal authorship.

After Court Hours. By GILCHRIST ALEXANDER, a former judge of the High Court, Tanganyika. With six caricatures by "KAPP." 1950. London: Butterworth & Co. (Publishers), Ltd. 10s. 6d. net.

This ought to be a good book but somehow or other it is not. The author's experiences have been long and varied and he has a prodigious memory, which has preserved for these pages the recollections of over fifty years since his call to the Bar by the Middle Temple. The most interesting section of the work is the last, dealing with his experiences in the South Seas. There more than elsewhere he escapes into the open country of narrative from the maze of reminiscences of the legal personalities of his time. As individual impressions of judges and counsel, some long forgotten by the world at large, some dimly remembered, his thumb-nail sketches have a good deal of merit and give these pages great value as a legal historian's reference book, especially as there is an excellent index. It can be dipped into with profit, but unfortunately for steady reading it is heavy going. Page after page of personalities cumulatively pall and perplex, till the individualities that should stand out become blurred in retrospect. A lively and illuminated style, like the late Maurice Healey's, could clothe the medley of characters with life, but anything more pedestrian tires.

Now a word about "get-up." Conditioned by the weighty tomes that are their normal stock-in-trade, law publishers tend to approach the presentation of the literary side of the law (which, after all, has a wide potential market in its own right) in much the same mood of unimaginative sobriety and quite often they must be left wondering why the result doesn't catch on very well. How this particular book is selling I do not know, but certainly it could have been given a bit more help. Why, for instance, the grave parchment tones of the paper and the dust cover? And the sketch on the dust cover—mildly competent, yes—but was it really the best that could be done as a decorative selling point? And then those rather grim caricatures by "Kapp," some not even very good likenesses, were they the most helpful illustrations? After court hours most lawyers can do with a little colour to life.

NOTES AND NEWS

Honours and Appointments

The King has conferred the honour of knighthood on Mr. Justice (WILLIAM) GORMAN.

The King has been pleased, on the recommendation of the Lord Chancellor, to approve the appointment of HUBERT LLEWELYN WILLIAMS, Esq., K.C., to be Stipendiary Magistrate of Swansea. This appointment is in accordance with the provisions of the Justices of the Peace Act, 1949, and takes effect from the 26th June, 1950.

The Lord Chancellor has appointed Mr. WILLIAM LISTER PENGELLY to be a Master of the Supreme Court of Judicature, Chancery Division, with effect from the 3rd July, 1950, in the place of Master Mosse, who has retired.

Mr. Justice FINNEMORE has been elected chairman of Warwickshire Quarter Sessions in succession to Lord Ilkeston, who has resigned.

Mr. MICHAEL CASEY, solicitor, of the Town Clerk's Department of the Stepney Metropolitan Borough Council, has been appointed Deputy Town Clerk to the Dartford Borough Council.

Mr. JOHN DEWS, assistant solicitor in the Town Clerk's office, Leicester, has been promoted chief assistant solicitor.

Mr. PATRICK GEE, solicitor, of Bishop's Stortford, has been appointed a magistrate for Essex.

Mr. A. STANSFIELD, a former committee clerk for the Burnley Corporation, has been appointed assistant solicitor to the corporation, with whom he has been for seventeen years.

Mr. R. T. WRIGHT, of the Town Clerk's Department, Southport, has been appointed an assistant solicitor to the corporation.

The Lord Chancellor has appointed Mr. MILBURN VINCENT MACKEY, Registrar of the Rochester County Court and District Registrar in the District Registry of the High Court of Justice in Rochester, to be in addition the Registrar of the Gravesend County Court as from the 1st July, 1950, vice Mr. Howard Winnett who retires.

The Lord Chancellor has appointed Mr. ALFRED DENNIS MURFIN, Registrar of the Hanley and Stoke-upon-Trent, Leek, Newcastle-under-Lyne, Stone and Uttoxeter County Courts and District Registrar in the District Registry of the High Court of Justice in Hanley, to be in addition the Registrar of Stafford County Court as from the 1st July, 1950, vice Mr. W. W. M. Morgan.

The Board of Trade have appointed Mr. ARTHUR THOMAS CHEEK to be Assistant Official Receiver in the Companies (Winding-up) Department with effect from 1st June, 1950.

Personal Notes

Mr. A. C. Borrie acted as interpreter at Derby Borough Magistrates Court on 26th June, for a Latvian who was charged with being drunk. Mr. Borrie, who was waiting to prosecute in another case on behalf of the Railway Executive, learnt German while a prisoner-of-war.

Mrs. M. A. Brown, solicitor, of Barnsley, recently addressed Barnsley Business and Professional Women's Club on "Women and the Law."

"Search No More," a new play by Mr. Paul Butters, solicitor, of Stafford, was presented last month by Lichfield Repertory Company.

Mr. H. J. S. Clark, solicitor, of Bournemouth, while excavating in the Saxon earthwork at his home at Wareham, has discovered a part of the medieval Wareham Castle.

Miscellaneous

The Land Tax Redemption Office of the Inland Revenue has removed to Barrington Road, Worthing.

The guarantee fund of the Provincial Brokers' Stock Exchange is now in operation. The draft regulations will be incorporated in a trust deed which is being prepared by the solicitors to the exchange. These regulations provide for the payment of compensation to clients who might suffer financial loss through dishonesty on the part of a member of the exchange or any employee of the member. The fund will be built up by annual contributions from members and the first annual payment has been fixed at 3 guineas per member. As some considerable time will elapse before the fund reaches the target figure of £50,000 an insurance policy has been taken out, indemnifying the exchange against any claims up to this amount. The fund is for the protection of members of the public only and compensation will only be payable for loss arising from actual dishonesty on the part of the member or a member of his staff. The decision of the committee with respect to every application for a grant will be final and contributory negligence on the part of the applicant will be taken into account. There are 342 practising members of the Provincial Brokers' Stock Exchange operating as 238 firms in 136 towns throughout the United Kingdom, Northern Ireland, the Isle of Man, the Channel Islands and the Republic of Ireland. The headquarters of the exchange are at York.

OBITUARY

MR. H. COOPER

Mr. Henry Cooper, principal of Messrs. Davies, Arnold and Cooper, of Finsbury Pavement, E.C.2, died on 24th June, aged 53. He was admitted in 1930.

MR. G. R. DAY

Mr. George Robert Day, M.A., solicitor, of Sevenoaks and Guildford, died on 14th June, aged 67. He was admitted in 1908.

MR. H. O. ROBERTS

Mr. Hugh Oliver Roberts, clerk to Newcastle on Tyne justices from 1934 to 1945, died on 27th June, aged 69. He was admitted in 1905.

MR. J. L. YARWOOD

Mr. John Llewelyn Yarwood, solicitor, of Blyth, died on 24th June, aged 63. He was admitted in 1915.

SOCIETIES

The annual general meeting of the GLOUCESTERSHIRE AND WILTSHIRE INCORPORATED LAW SOCIETY was held at the King's Head Hotel, Cirencester, on 21st June, 1950, Mr. S. W. H. Dann, of Chippenham, presiding. The reports of committees and accounts and balance sheet were approved. It was reported that the membership of the society was now 200. Mr. P. J. Bretherton (Gloucester) was appointed president, and Mr. I. D. Yeaman (Cheltenham) vice-president for the ensuing year. Mr. D. G. Howell (Cheltenham) was appointed honorary secretary. A grant of 35 guineas was made to the Solicitors' Benevolent Association.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: 88-90, Chancery Lane, London, W.C.2. Telephone: Holborn 1403.

Annual Subscription: £3 inclusive (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Tuesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).